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December 4, 2013

Mr. Mark Langer, Clerk
U.S. Court of Appeals, D.C. Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, NW
Washington, D.C. 20001

Re: Fed. R. App. P. 28(j) Letter—*Aamer v. Obama*, No. 13-5223

Dear Mr. Langer:

The Government's letter to the Court dated November 21, 2013 states that the Guantánamo force-feeding protocols were revised on November 14, 2013, and that force-feeding under the revised protocols "remains essentially the same" as previously. Doc. #1467337 at 1 n.1. This letter addresses the revised protocols and their effect on the Court's decision-making process.

Appellants' briefs on this appeal address the previous version of the protocols dated March 5, 2013, which have now been superseded by the revised protocols dated November 14, 2013. Because the appeal is from an order denying an injunction, the protocols subject to this Court's review are the protocols in effect at the time of the Court's decision—that is, the protocols as revised on November 14, 2013. *See Landgraf v. USI Film Products*, 511 U.S. 244, 273-74 (1994); *Legal Assistance for Vietnamese Asylum Seekers v. Department of State*, 104 F.3d 1349, 1352 (D.C. Cir. 1997).

Consequently, if this Court intends to decide the merits on the present appeal, rather than limiting its decision to the jurisdictional issue, appellants respectfully request permission to file a supplemental brief discussing the substance of the revised protocols and whether they meet

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the standard for validity. Such discussion would be essential to adjudication on the merits.

The Government has not provided this Court with the revised protocols, but has allowed us to review them (except for one portion, which the Government has not yet disclosed to us despite our repeated requests), under designation as “protected information.” Upon such review, we take issue with the Government’s statement in its letter of November 21, 2013 that force-feeding under the revised protocols “remains essentially the same.” Doc. #1467337 at 1 n.1. The purpose of our proposed supplemental briefing would be to demonstrate how the revised protocols differ from the previous version of the protocols, how the revised protocols differ from the Bureau of Prisons force-feeding protocols, and why the revised protocols, like the previous version, do not meet the standard for validity.

If, however, the Court does not intend to address the merits on the present appeal, no supplemental briefing will be necessary.

Respectfully submitted,

December 4, 2013

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/s/

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REPRIEVE

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/s/

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Signature: s/ Jon B. Eisenberg